

110TH CONGRESS
2D SESSION

S. 1492

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Referred to the Committee on Energy and Commerce

AN ACT

To improve the quality of Federal and State data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the Nation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—BROADBAND DATA**
4 **IMPROVEMENT**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Broadband Data Im-
7 provement Act”.

8 **SEC. 102 FINDINGS.**

9 The Congress finds the following:

10 (1) The deployment and adoption of broadband
11 technology has resulted in enhanced economic devel-
12 opment and public safety for communities across the
13 Nation, improved health care and educational oppor-
14 tunities, and a better quality of life for all Ameri-
15 cans.

16 (2) Continued progress in the deployment and
17 adoption of broadband technology is vital to ensur-
18 ing that our Nation remains competitive and con-
19 tinues to create business and job growth.

20 (3) Improving Federal data on the deployment
21 and adoption of broadband service will assist in the
22 development of broadband technology across all re-
23 gions of the Nation.

24 (4) The Federal Government should also recog-
25 nize and encourage complementary State efforts to

1 improve the quality and usefulness of broadband
 2 data and should encourage and support the partner-
 3 ship of the public and private sectors in the contin-
 4 ued growth of broadband services and information
 5 technology for the residents and businesses of the
 6 Nation.

7 **SEC. 103 IMPROVING FEDERAL DATA ON BROADBAND.**

8 (a) IMPROVING SECTION 706 INQUIRY.—Section 706
 9 of the Telecommunications Act of 1996 (47 U.S.C. 157
 10 note) is amended—

11 (1) by striking “regularly” in subsection (b)
 12 and inserting “annually”;

13 (2) by redesignating subsection (c) as sub-
 14 section (d); and

15 (3) by inserting after subsection (b) the fol-
 16 lowing:

17 “(c) DEMOGRAPHIC INFORMATION FOR UNSERVED
 18 AREAS.—As part of the inquiry required by subsection (b),
 19 the Commission shall compile a list of geographical areas
 20 that are not served by any provider of advanced tele-
 21 communications capability (as defined by section
 22 706(c)(1) of the Telecommunications Act of 1996 (47
 23 U.S.C. 157 note)) and to the extent that data from the
 24 Census Bureau is available, determine, for each such
 25 unserved area—

- 1 “(1) the population;
2 “(2) the population density; and
3 “(3) the average per capita income.”.

4 (b) INTERNATIONAL COMPARISON.—

5 (1) IN GENERAL.—As part of the assessment
6 and report required by section 706 of the Tele-
7 communications Act of 1996 (47 U.S.C. 157 note),
8 the Federal Communications Commission shall in-
9 clude information comparing the extent of
10 broadband service capability (including data trans-
11 mission speeds and price for broadband service capa-
12 bility) in a total of 75 communities in at least 25
13 countries abroad for each of the data rate bench-
14 marks for broadband service utilized by the Commis-
15 sion to reflect different speed tiers.

16 (2) CONTENTS.—The Commission shall choose
17 communities for the comparison under this sub-
18 section in a manner that will offer, to the extent
19 possible, communities of a population size, popu-
20 lation density, topography, and demographic profile
21 that are comparable to the population size, popu-
22 lation density, topography, and demographic profile
23 of various communities within the United States.
24 The Commission shall include in the comparison
25 under this subsection—

1 (A) a geographically diverse selection of
2 countries; and

3 (B) communities including the capital cit-
4 ies of such countries.

5 (3) SIMILARITIES AND DIFFERENCES.—The
6 Commission shall identify relevant similarities and
7 differences in each community, including their mar-
8 ket structures, the number of competitors, the num-
9 ber of facilities-based providers, the types of tech-
10 nologies deployed by such providers, the applications
11 and services those technologies enable, the regu-
12 latory model under which broadband service capa-
13 bility is provided, the types of applications and serv-
14 ices used, business and residential use of such serv-
15 ices, and other media available to consumers.

16 (c) CONSUMER SURVEY OF BROADBAND SERVICE
17 CAPABILITY.—

18 (1) IN GENERAL.—For the purpose of evalu-
19 ating, on a statistically significant basis, the national
20 characteristics of the use of broadband service capa-
21 bility, the Commission shall conduct and make pub-
22 lic periodic surveys of consumers in urban, subur-
23 ban, and rural areas in the large business, small
24 business, and residential consumer markets to deter-
25 mine—

1 (A) the types of technology used to provide
2 the broadband service capability to which con-
3 sumers subscribe;

4 (B) the amounts consumers pay per month
5 for such capability;

6 (C) the actual data transmission speeds of
7 such capability;

8 (D) the types of applications and services
9 consumers most frequently use in conjunction
10 with such capability;

11 (E) for consumers who have declined to
12 subscribe to broadband service capability, the
13 reasons given by such consumers for declining
14 such capability;

15 (F) other sources of broadband service ca-
16 pability which consumers regularly use or on
17 which they rely; and

18 (G) any other information the Commission
19 deems appropriate for such purpose.

20 (2) PUBLIC AVAILABILITY.—The Commission
21 shall make publicly available the results of surveys
22 conducted under this subsection at least once per
23 year.

24 (d) IMPROVING CENSUS DATA ON BROADBAND.—
25 The Secretary of Commerce, in consultation with the Fed-

1 eral Communications Commission, shall expand the Amer-
 2 ican Community Survey conducted by the Bureau of the
 3 Census to elicit information for residential households, in-
 4 cluding those located on native lands, to determine wheth-
 5 er persons at such households own or use a computer at
 6 that address, whether persons at that address subscribe
 7 to Internet service and, if so, whether such persons sub-
 8 scribe to dial-up or broadband Internet service at that ad-
 9 dress.

10 (e) PROPRIETARY INFORMATION.—Nothing in this
 11 title shall reduce or remove any obligation the Commission
 12 has to protect proprietary information, nor shall this title
 13 be construed to compel the Commission to make publicly
 14 available any proprietary information.

15 **SEC. 104. STUDY ON ADDITIONAL BROADBAND METRICS**
 16 **AND STANDARDS.**

17 (a) IN GENERAL.—The Comptroller General shall
 18 conduct a study to consider and evaluate additional
 19 broadband metrics or standards that may be used by in-
 20 dustry and the Federal Government to provide users with
 21 more accurate information about the cost and capability
 22 of their broadband connection, and to better compare the
 23 deployment and penetration of broadband in the United
 24 States with other countries. At a minimum, such study

1 shall consider potential standards or metrics that may be
2 used—

3 (1) to calculate the average price per megabit
4 per second of broadband offerings;

5 (2) to reflect the average actual speed of
6 broadband offerings compared to advertised poten-
7 tial speeds and to consider factors affecting speed
8 that may be outside the control of a broadband pro-
9 vider;

10 (3) to compare, using comparable metrics and
11 standards, the availability and quality of broadband
12 offerings in the United States with the availability
13 and quality of broadband offerings in other industri-
14 alized nations, including countries that are members
15 of the Organization for Economic Cooperation and
16 Development; and

17 (4) to distinguish between complementary and
18 substitutable broadband offerings in evaluating de-
19 ployment and penetration.

20 (b) REPORT.—Not later than 1 year after the date
21 of enactment of this Act, the Comptroller General shall
22 submit a report to the Senate Committee on Commerce,
23 Science, and Transportation and the House of Represent-
24 atives Committee on Energy and Commerce on the results
25 of the study, with recommendations for how industry and

1 the Federal Communications Commission can use such
2 metrics and comparisons to improve the quality of
3 broadband data and to better evaluate the deployment and
4 penetration of comparable broadband service at com-
5 parable rates across all regions of the Nation.

6 **SEC. 105. STUDY ON THE IMPACT OF BROADBAND SPEED**
7 **AND PRICE ON SMALL BUSINESSES.**

8 (a) IN GENERAL.—Subject to appropriations, the
9 Small Business Administration Office of Advocacy shall
10 conduct a study evaluating the impact of broadband speed
11 and price on small businesses.

12 (b) REPORT.—Not later than 2 years after the date
13 of enactment of this Act, the Office shall submit a report
14 to the Senate Committee on Commerce, Science, and
15 Transportation, the Senate Committee on Small Business
16 and Entrepreneurship, the House of Representatives Com-
17 mittee on Energy and Commerce, and the House of Rep-
18 resentatives Committee on Small Business on the results
19 of the study, including—

20 (1) a survey of broadband speeds available to
21 small businesses;

22 (2) a survey of the cost of broadband speeds
23 available to small businesses;

24 (3) a survey of the type of broadband tech-
25 nology used by small businesses; and

1 (4) any policy recommendations that may im-
2 prove small businesses access to comparable
3 broadband services at comparable rates in all regions
4 of the Nation.

5 **SEC. 106. ENCOURAGING STATE INITIATIVES TO IMPROVE**
6 **BROADBAND.**

7 (a) PURPOSES.—The purposes of any grant under
8 subsection (b) are—

9 (1) to ensure that all citizens and businesses in
10 a State have access to affordable and reliable
11 broadband service;

12 (2) to achieve improved technology literacy, in-
13 creased computer ownership, and broadband use
14 among such citizens and businesses;

15 (3) to establish and empower local grassroots
16 technology teams in each State to plan for improved
17 technology use across multiple community sectors;
18 and

19 (4) to establish and sustain an environment
20 ripe for broadband services and information tech-
21 nology investment.

22 (b) ESTABLISHMENT OF STATE BROADBAND DATA
23 AND DEVELOPMENT GRANT PROGRAM.—

24 (1) IN GENERAL.—The Secretary of Commerce
25 shall award grants, taking into account the results

1 of the peer review process under subsection (d), to
2 eligible entities for the development and implementa-
3 tion of statewide initiatives to identify and track the
4 availability and adoption of broadband services with-
5 in each State.

6 (2) COMPETITIVE BASIS.—Any grant under
7 subsection (b) shall be awarded on a competitive
8 basis.

9 (c) ELIGIBILITY.—To be eligible to receive a grant
10 under subsection (b), an eligible entity shall—

11 (1) submit an application to the Secretary of
12 Commerce, at such time, in such manner, and con-
13 taining such information as the Secretary may re-
14 quire;

15 (2) contribute matching non-Federal funds in
16 an amount equal to not less than 20 percent of the
17 total amount of the grant; and

18 (3) agree to comply with confidentiality require-
19 ments in subsection (h)(2) of this section.

20 (d) PEER REVIEW; NONDISCLOSURE.—

21 (1) IN GENERAL.—The Secretary shall by regu-
22 lation require appropriate technical and scientific
23 peer review of applications made for grants under
24 this section.

1 (2) REVIEW PROCEDURES.—The regulations re-
2 quired under paragraph (1) shall require that any
3 technical and scientific peer review group—

4 (A) be provided a written description of
5 the grant to be reviewed;

6 (B) provide the results of any review by
7 such group to the Secretary of Commerce; and

8 (C) certify that such group will enter into
9 voluntary nondisclosure agreements as nec-
10 essary to prevent the unauthorized disclosure of
11 confidential and proprietary information pro-
12 vided by broadband service providers in connec-
13 tion with projects funded by any such grant.

14 (e) USE OF FUNDS.—A grant awarded to an eligible
15 entity under subsection (b) shall be used—

16 (1) to provide a baseline assessment of
17 broadband service deployment in each State;

18 (2) to identify and track—

19 (A) areas in each State that have low lev-
20 els of broadband service deployment;

21 (B) the rate at which residential and busi-
22 ness users adopt broadband service and other
23 related information technology services; and

24 (C) possible suppliers of such services;

1 (3) to identify barriers to the adoption by indi-
2 viduals and businesses of broadband service and re-
3 lated information technology services, including
4 whether or not—

5 (A) the demand for such services is absent;
6 and

7 (B) the supply for such services is capable
8 of meeting the demand for such services;

9 (4) to identify the speeds of broadband connec-
10 tions made available to individuals and businesses
11 within the State, and, at a minimum, to rely on the
12 data rate benchmarks for broadband service utilized
13 by the Commission to reflect different speed tiers, to
14 promote greater consistency of data among the
15 States;

16 (5) to create and facilitate in each county or
17 designated region in a State a local technology plan-
18 ning team—

19 (A) with members representing a cross sec-
20 tion of the community, including representatives
21 of business, telecommunications labor organiza-
22 tions, K–12 education, health care, libraries,
23 higher education, community-based organiza-
24 tions, local government, tourism, parks and
25 recreation, and agriculture; and

1 (B) which shall—

2 (i) benchmark technology use across
3 relevant community sectors;

4 (ii) set goals for improved technology
5 use within each sector; and

6 (iii) develop a tactical business plan
7 for achieving its goals, with specific rec-
8 ommendations for online application devel-
9 opment and demand creation;

10 (6) to work collaboratively with broadband serv-
11 ice providers and information technology companies
12 to encourage deployment and use, especially in
13 unserved areas and areas in which broadband pene-
14 tration is significantly below the national average,
15 through the use of local demand aggregation, map-
16 ping analysis, and the creation of market intelligence
17 to improve the business case for providers to deploy;

18 (7) to establish programs to improve computer
19 ownership and Internet access for unserved areas
20 and areas in which broadband penetration is signifi-
21 cantly below the national average;

22 (8) to collect and analyze detailed market data
23 concerning the use and demand for broadband serv-
24 ice and related information technology services;

1 (9) to facilitate information exchange regarding
2 the use and demand for broadband services between
3 public and private sectors; and

4 (10) to create within each State a geographic
5 inventory map of broadband service, including the
6 data rate benchmarks for broadband service utilized
7 by the Commission to reflect different speed tiers,
8 which shall—

9 (A) identify gaps in such service through a
10 method of geographic information system map-
11 ping of service availability based on the geo-
12 graphic boundaries of where service is available
13 or unavailable among residential or business
14 customers; and

15 (B) provide a baseline assessment of state-
16 wide broadband deployment in terms of house-
17 holds with high-speed availability.

18 (f) PARTICIPATION LIMIT.—For each State, an eligi-
19 ble entity may not receive a new grant under this section
20 to fund the activities described in subsection (d) within
21 such State if such organization obtained prior grant
22 awards under this section to fund the same activities in
23 that State in each of the previous 4 consecutive years.

24 (g) REPORTING; BROADBAND INVENTORY MAP.—
25 The Secretary of Commerce shall—

1 (1) require each recipient of a grant under sub-
2 section (b) to submit a report on the use of the
3 funds provided by the grant; and

4 (2) create a web page on the Department of
5 Commerce website that aggregates relevant informa-
6 tion made available to the public by grant recipients,
7 including, where appropriate, hypertext links to any
8 geographic inventory maps created by grant recipi-
9 ents under subsection (e)(10).

10 (h) ACCESS TO AGGREGATE DATA.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 the Commission shall provide eligible entities access,
13 in electronic form, to aggregate data collected by the
14 Commission based on the Form 477 submissions of
15 broadband service providers.

16 (2) LIMITATION.—Notwithstanding any provi-
17 sion of Federal or State law to the contrary, an eli-
18 gible entity shall treat any matter that is a trade se-
19 cret, commercial or financial information, or privi-
20 leged or confidential, as a record not subject to pub-
21 lic disclosure except as otherwise mutually agreed to
22 by the broadband service provider and the eligible
23 entity. This paragraph applies only to information
24 submitted by the Commission or a broadband pro-
25 vider to carry out the provisions of this title and

1 shall not otherwise limit or affect the rules gov-
 2 erning public disclosure of information collected by
 3 any Federal or State entity under any other Federal
 4 or State law or regulation.

5 (i) DEFINITIONS.—In this section:

6 (1) COMMISSION.—The term “Commission”
 7 means the Federal Communications Commission.

8 (2) ELIGIBLE ENTITY.—The term “eligible enti-
 9 ty” means—

10 (A) an entity that is either—

11 (i) an agency or instrumentality of a
 12 State, or a municipality or other subdivi-
 13 sion (or agency or instrumentality of a mu-
 14 nicipality or other subdivision) of a State;

15 (ii) a nonprofit organization that is
 16 described in section 501(c)(3) of the Inter-
 17 nal Revenue Code of 1986 and that is ex-
 18 empt from taxation under section 501(a)
 19 of such Code; or

20 (iii) an independent agency or com-
 21 mission in which an office of a State is a
 22 member on behalf of the State; and

23 (B) is the single eligible entity in the State
 24 that has been designated by the State to receive
 25 a grant under this section.

1 (j) NO REGULATORY AUTHORITY.—Nothing in this
 2 section shall be construed as giving any public or private
 3 entity established or affected by this title any regulatory
 4 jurisdiction or oversight authority over providers of
 5 broadband services or information technology.

6 **TITLE II—PROTECTING** 7 **CHILDREN**

8 **SEC. 201. SHORT TITLE; TABLE OF CONTENTS.**

9 (a) SHORT TITLE.—This title may be cited as the
 10 “Protecting Children in the 21st Century Act”.

11 (b) TABLE OF CONTENTS.—The table of contents for
 12 this title is as follows:

Sec. 201. Short title; table of contents.

SUBTITLE A—PROMOTING A SAFE INTERNET FOR CHILDREN

Sec. 211. Internet safety.

Sec. 212. Public awareness campaign.

Sec. 213. Annual reports.

Sec. 214. Online safety and technology working group.

Sec. 215. Promoting online safety in schools.

Sec. 216. Definitions.

SUBTITLE B—ENHANCING CHILD PORNOGRAPHY ENFORCEMENT

Sec. 221. Child pornography prevention; forfeitures related to child pornography violations.

13 **SUBTITLE A—PROMOTING A** 14 **SAFE INTERNET FOR CHILDREN**

15 **SEC. 211. INTERNET SAFETY.**

16 For the purposes of this title, the issue of Internet
 17 safety includes issues regarding the use of the Internet
 18 in a manner that promotes safe online activity for chil-
 19 dren, protects children from cybercrimes, including crimes

1 by online predators, and helps parents shield their children
2 from material that is inappropriate for minors.

3 **SEC. 212. PUBLIC AWARENESS CAMPAIGN.**

4 The Federal Trade Commission shall carry out a na-
5 tionwide program to increase public awareness and pro-
6 vide education regarding strategies to promote the safe
7 use of the Internet by children. The program shall utilize
8 existing resources and efforts of the Federal Government,
9 State and local governments, nonprofit organizations, pri-
10 vate technology and financial companies, Internet service
11 providers, World Wide Web-based resources, and other ap-
12 propriate entities, that includes—

13 (1) identifying, promoting, and encouraging
14 best practices for Internet safety;

15 (2) establishing and carrying out a national
16 outreach and education campaign regarding Internet
17 safety utilizing various media and Internet-based re-
18 sources;

19 (3) facilitating access to, and the exchange of,
20 information regarding Internet safety to promote up-
21 to-date knowledge regarding current issues; and

22 (4) facilitating access to Internet safety edu-
23 cation and public awareness efforts the Commission
24 considers appropriate by States, units of local gov-

1 ernment, schools, police departments, nonprofit or-
 2 ganizations, and other appropriate entities.

3 **SEC. 213. ANNUAL REPORTS.**

4 The Commission shall submit a report to the Senate
 5 Committee on Commerce, Science, and Transportation not
 6 later than March 31 of each year that describes the activi-
 7 ties carried out under section 103 by the Commission dur-
 8 ing the preceding calendar year.

9 **SEC. 214. ONLINE SAFETY AND TECHNOLOGY WORKING**
 10 **GROUP.**

11 (a) ESTABLISHMENT.—Within 90 days after the date
 12 of enactment of this Act, the Assistant Secretary of Com-
 13 merce for Communications and Information shall establish
 14 an Online Safety and Technology working group com-
 15 prised of representatives of relevant sectors of the business
 16 community, public interest groups, and other appropriate
 17 groups and Federal agencies to review and evaluate—

18 (1) the status of industry efforts to promote on-
 19 line safety through educational efforts, parental con-
 20 trol technology, blocking and filtering software, age-
 21 appropriate labels for content or other technologies
 22 or initiatives designed to promote a safe online envi-
 23 ronment for children;

24 (2) the status of industry efforts to promote on-
 25 line safety among providers of electronic communica-

1 tions services and remote computing services by re-
2 porting apparent child pornography under section
3 13032 of title 42, United States Code, including any
4 obstacles to such reporting;

5 (3) the practices of electronic communications
6 service providers and remote computing service pro-
7 viders related to record retention in connection with
8 crimes against children; and

9 (4) the development of technologies to help par-
10 ents shield their children from inappropriate mate-
11 rial on the Internet.

12 (b) REPORT.—Within 1 year after the working group
13 is first convened, it shall submit a report to the Assistant
14 Secretary and the Senate Committee on Commerce,
15 Science, and Transportation that—

16 (1) describes in detail its findings, including
17 any information related to the effectiveness of such
18 strategies and technologies and any information
19 about the prevalence within industry of educational
20 campaigns, parental control technologies, blocking
21 and filtering software, labeling, or other technologies
22 to assist parents; and

23 (2) includes recommendations as to what types
24 of incentives could be used or developed to increase

1 the effectiveness and implementation of such strate-
 2 gies and technologies.

3 (c) FACA NOT TO APPLY TO WORKING GROUP.—
 4 The Federal Advisory Committee Act (5 U.S.C. App.)
 5 shall not apply to the working group.

6 **SEC. 215. PROMOTING ONLINE SAFETY IN SCHOOLS.**

7 Section 254(h)(5)(B) of the Communications Act of
 8 1934 (47 U.S.C. 254(h)(5)(b)) is amended—

9 (1) by striking “and” after the semicolon in
 10 clause (i);

11 (2) by striking “minors.” in clause (ii) and in-
 12 serting “minors; and”; and

13 (3) by adding at the end the following:

14 “(iii) as part of its Internet safety
 15 policy is educating minors about appro-
 16 priate online behavior, including inter-
 17 acting with other individuals on social net-
 18 working websites and in chat rooms and
 19 cyberbullying awareness and response.”.

20 **SEC. 216. DEFINITIONS.**

21 In this title:

22 (1) COMMISSION.—The term “Commission”
 23 means the Federal Trade Commission.

24 (2) INTERNET.—The term “Internet” means
 25 collectively the myriad of computer and tele-

1 communications facilities, including equipment and
 2 operating software, which comprise the inter-
 3 connected world-wide network of networks that em-
 4 ploy the Transmission Control Protocol/Internet
 5 Protocol, or any predecessor successor protocols to
 6 such protocol, to communicate information of all
 7 kinds by wire or radio.

8 **TITLE II—ENHANCING CHILD**
 9 **PORNOGRAPHY ENFORCEMENT**

10 **SEC. 221. CHILD PORNOGRAPHY PREVENTION; FORFEIT-**
 11 **URES RELATED TO CHILD PORNOGRAPHY**
 12 **VIOLATIONS.**

13 (a) IN GENERAL.—Section 503(b)(1) of the Commu-
 14 nications Act of 1934 (47 U.S.C. 503(b)(1)) is amended
 15 by striking “or 1464” in subparagraph (D) and inserting
 16 “1464, or 2252”.

 Passed the Senate September 26 (legislative day,
 September 17), 2008.

Attest:

NANCY ERICKSON,
Secretary.